
United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of

GILBERT S. GORDON,

Bankrupt.

INDIA TIRE AND RUBBER COMPANY,

Appellant,

vs.

CARL O. RETSLOFF, Trustee in Bankruptcy of Gilbert
S. Gordan, Bankrupt,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

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F. M. STONE & CO.

No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

MINOR MOORE, Esq.,

C. V. CALDWELL, Esq.,

Stock Exchange Building, Los Angeles, California.

For Appellee:

TOMPKINS & CLARK,

WILL M. TOMPKINS,

Spreckels Building, San Diego, California.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS, NINTH CIRCUIT.

In the Matter of)	
	(	In Bankruptcy
GILBERT GORDON,	)	No. 11544-M
	(	CITATION ON
Bankrupt.	)	APPEAL

UNITED STATES OF AMERICA SS.

The President of the United States to Carl O. Retsloff,
Trustee in Bankruptcy:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, state of California, on the 8th day of August, 1929, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, wherein you, as trustee in bankruptcy of Gilbert Gordon, bankrupt, are appellee, and India Tire and Rubber Company, a corporation, is the appellant, to show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive that which may appertain to justice to be done in the premises.

Witness the Honorable Paul J. McCormick, judge for the District Court of the United States, Southern District of California, Southern Division, on the 8th day of July, 1929, in the year of our Lord one thousand nine hundred twenty-nine.

Paul J. McCormick
District Judge.

[Endorsed]: No. 11544-M. In the United States District Court Southern District of California, Central Division. In the matter of Gilbert Gordon, Bankrupt. Citation on Appeal. Received copy of the within Citation on Appeal this 17th day of July, 1929. Tompkins & Clark, Will M. Tompkins, attorneys for trustee. Filed Jul. 19, 1929, 3 P. M. R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy Clerk. Minor Moore, C. V. Caldwell, Stock Exchange Building, Los Angeles, Calif. Trinity 4097.

-- O --

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

-- O --

In the Matter of)
GILBERT S. GORDAN,) IN BANKRUPTCY
Bankrupt.)

At LOS ANGELES, in the Southern District of California on the 9 day of July, 1928 came C. A. SCHWAN of Los Angeles, County of Los Angeles, State of California, and made oath and says:

That he is Asst Secretary of India Tire & Rubber Company, a corporation, incorporated by and under the laws of the State of W. Virginia, and carrying on business at Los Angeles, County of Los Angeles, State of California, and that he is duly authorized to make this Proof of Debt and execute this Letter of Attorney.

That the said Gilbert S. Gordan, the person whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said claimant in the sum of Nine thousand Thirty-eight and 54/100 (\$9,038.54) Dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered within four years last past by the claimant, an itemized bill of which, marked Exhibit "A" is hereto annexed and referred to as a part hereof.

That the treasurer is without the Southern District of California; affiant's duties most nearly correspond to those of treasurer; that no part of said debt has been paid; no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counter-claims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill and that said claimant has not, nor has any other person by claimants order, or to the knowledge or belief of deponent or for claimant, had or received any manner of security whatever for said debt.

C. A. Schwan

Assistant Secretary.

[Jurat and power of attorney omitted]

[Endorsed]: A. In the United States District Court, Southern District of California, Southern Division. In the Matter of Gilbert S. Gordan, Bankrupt. Proof of Debt Due India Tire & Rubber Company for \$9,038.54. Filed July 10, 1928. F. F. Grant, L. B. Referee in Bankruptcy. Filed May 7, 1929 at 1 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy. Forward all Notices and Dividends to W. T. Craig, Attorney for Claimant 500 Board of Trade Building, Los Angeles, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

In Bankruptcy No. 11544-M

In the Matter of)
GILBERT S. GORDAN,) OBJECTIONS TO
Bankrupt.) PROOF OF DEBT.

TO F. F. GRANT, Esq., Referee in Bankruptcy:

I, Carl O. Retsloff, Trustee in this proceeding, do hereby object to the proof of debt filed on July 10, 1928, by the India Tire and Rubber Company, an alleged creditor, for Nine Thousand Thirty-eight and 54/100 Dollars (\$9,038.54); the said objection is made upon the following grounds:

That prior to and within four months of the filing of the petition in bankruptcy by the bankrupt, the said India Tire and Rubber Company did remove and take possession of certain merchandise consisting of automobile tires and tubes to the value of Two Thousand Five Hundred Forty-six and 84/100 Dollars (\$2546.84), knowing that said bankrupt was insolvent at the time said merchandise was taken from him.

I respectfully request that said proof of debt be rejected and disallowed and no dividends declared upon same.

Dated this 12th day of January, 1929.

Carl O Retsloff
Trustee.

[Endorsed]: No. 11544 In the District Court of the United States of the Southern District of California, Southern Division. In the matter of Gilbert A. Gordan, Bankrupt. Objections to Proof of Debt. Filed Jany

12/29 Referee Filed May 7, 1929 at 1 o'clock P. M. R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy. Tompkins & Clark, 526 Spreckels Bldg. San Diego, California. Attorneys for trustee.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

In the Matter of	)	In Bankruptcy
	)	No. 11544-M
GILBERT S. GORDON,	)	ORDER SUSTAINING
	)	OBJECTIONS OF
Bankrupt	)	TRUSTEE.

This matter came on regularly to be heard on the 5th day of March, 1929, at the hour of ten A. M., Will M. Tompkins appearing as counsel for the Trustee herein, and Minor Moore appearing as counsel for the India Tire and Rubber Company, a corporation. Oral testimony and documentary evidence was produced by both parties, and on the 9th day of April, 1929, the court filed its Decision and Findings of Fact and Conclusions of Law.

That in accordance with said Findings of Fact and Conclusions of Law, and based upon the testimony and evidence adduced at the trial, it is

ORDERED, ADJUDGED AND DECREED that the Proof of Claim filed in this court by the India Tire and Rubber Company, a corporation, against the above named bankrupt in the sum of Nine Thousand Thirty-Eight and 54/100 Dollars (\$9,038.54) be, and the same is hereby disallowed.

Dated this 23rd day of April, 1929.

F. F. Grant
Referee.

[Endorsed]: No. 11544-M. In the District Court of the United States, of the Southern District of California Southern Division. In the matter of Gilbert S. Gordon, Bankrupt. Order sustaining objections of trustee. Filed April 23/1929 F. F. Grant, Referee Filed May 7, 1929 at 1 o'clock P. M. R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy. Tompkins & Clark 526 Spreckels Bldg. San Diego, California. Attorneys for trustee.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In the Matter of)
)
GILBERT S. GORDON, (No. 11544-M.
) Exceptions to Referee's
) Order.
Bankrupt.)
----- !

Now comes India Tire & Rubber Company, a corporation, a creditor of the above named bankrupt, and files the following exceptions to the decision and order made on the 23rd day of April, 1929, by F. F. Grant, Referee in charge of this proceeding:

- 1. That said order was contrary to the evidence as shown by the record herein, and contrary to law;
- 2. Evidence was improperly received and considered by said Referee over objections of said India Tire & Rubber Company, as appears by the record hereof.

Dated: April 29th, 1929.

Minor Moore
C. V. Caldwell
Attorneys for India Tire & Rubber Company

2. That said order is not supported by the evidence, and the Trustee failed to sustain the burden of proof which the law imposes upon him in the following particulars:

(a) The evidence is insufficient to show that the bankrupt, Gilbert S. Gordon, was insolvent at the time of the transfer of the merchandise to petitioner;

(b) The evidence is insufficient to show that petitioner had reasonable cause to believe at the time of said transfer that a preference would be affected by reason of said transfer;

(c) That the evidence is insufficient to show that petitioner at the time of said transfer had reasonable cause to believe that the debtor was insolvent.

(d) The evidence is insufficient to show that the merchandise transferred to petitioner was of the value claimed by the Trustee herein and found by the Referee.

WHEREFORE, your petitioner, feeling aggrieved because of said order, prays that the same may be reviewed as provided in the Bankruptcy Act and General Order No. 27.

Minor Moore
C. V. Caldwell

STATE OF CALIFORNIA)
 (SS
COUNTY OF LOS ANGELES)

MINOR MOORE being first duly sworn deposes and says:

That he is the attorney of India Tire & Rubber Company, petitioner herein; that petitioner is a foreign corporation, and affiant is authorized to make this verification on its behalf; that he has read the foregoing petition and knows the contents thereof, and the same is true to the best of affiant's knowledge and belief.

Minor Moore

SUBSCRIBED and sworn to before me on this 29th day of April, 1929.

[Seal]

C. V. Caldwell

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 11544-M. In the District Court of the United States, District of Southern California, Southern Division. In the matter of Gilbert S. Gordon, Bankrupt. Petition for Revision. Filed April 30/29 F. F. Grant, Referee Filed May 7, 1929 at 1 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy. Minor Moore, Law offices, 911 Stock Exchange Building Los Angeles, Calif., attorney for *petition*.

At a stated term, to wit: The January Term, A. D. 1929 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, California on Tuesday the 25th day of June in the year of our Lord one thousand nine hundred and twenty-nine

Present:

The Honorable Paul J. McCormick, District Judge.

In the Matter of)	
)	
Gilbert Gordon,	)	No. 11544-M Bkey.
)	
Bankrupt.)	

After an examination of the record and evidence filed herein, I am not satisfied that the Referee's decision disallowing the claim of the India Tire & Rubber Co. for

\$9038.54 as preferential with knowledge of insolvency of debtor, is erroneous. Under such circumstances, said Referee's decision should not be disturbed, and it is therefore ordered on this review that the Referee's decision therein, as well as his order thereon dated April 9th, 1929 are and each is confirmed.



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

In the Matter of)
GILBERT GORDON,) (Bankruptcy No. 11544-M)
STIPULATION.)
(
Bankrupt)

It is hereby stipulated by and between Minor Moore and C. V. Caldwell, attorneys for Appellant and Tompkins & Clark, attorneys for Appellee, that the foregoing statement of the evidence taken and received in said matter is true and correct and contains all of the material evidence introduced upon the trial of said action, and the certificate of the Court as to the correctness of said statement is hereby waived.

Dated this 2nd day of October, 1929.

Minor Moore
C. V. Caldwell
Attorneys for Appellant
Will M. Tompkins
Attorneys for Appellee

It is so ordered
Edward J. Henning
Judge

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION

In the Matter of)
) (Bankruptcy No. 11544 M
GILBERT GORDON,) EVIDENCE
) (RECEIVED UPON
Bankrupt) THE TRIAL.

Upon the trial of this action before the Referee in Bankruptcy the following evidence was received, same being all of the material evidence offered or received before the Referee and upon a review being taken to the District Court a transcript of the testimony so received by the Referee was duly filed and was considered by the District Court in passing on the questions raised by the petition for review.

DIRECT EXAMINATION

By Mr. Tompkins

CARL O. RETSLOFF,

trustee of the estate of Gilbert Gordon, bankrupt, called as a witness, testified in his own behalf in objection to the allowance of the claim of appellant, as follows:

I am trustee of the estate of Gilbert Gordon, the bankrupt having appointed such trustee on July 10th, 1928. After my appointment I went to the place of business of the bankrupt and took over such books and records which I could find. I found certain credit slips of the India Tire & Rubber Company. I did not find the tires at the bankrupt's place of business which are described in the

(Testimony of Carl O. Retsloff)

credit slip dated April 18th, 1928 Among the credit slips was a credit memorandum which was offered and received in evidence, and marked Exhibit "A". and is as follows:

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio

Los Angeles Branch

No. 67805

Date 4/18/28

Approved by Gericke

CREDIT TO

Gordon's, San Diego California Folio No 29016

Salesman—Greenwood

Other reason for credit—To Liquidate Account

Terms—Gross

Quantity	Description	Price	Total
	We Credit your account with		
4	30x6 30 Reg Baln Cord	22 50	90 00
2	32x6 20 DO	23 50	47 00
2	32x6 75 DO	25 15	50 30
2	33x6 75 DO	26 10	52 20
			<hr/>
			239 50

Duplicate

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio

Los Angeles Branch

No 67805

Date 4/18/28

Approved by Gericke

CREDIT TO

Gordon's, San Diego California Folio No 29017

Salesman—Greenwood

(Testimony of Carl O. Retsloff)

Other reason for credit—To Liquidate Account

Terms—Gross

Quantity	Description	Price	Total
We Credit your account with			
2	30x6 20 Blue Tube	4 80	9 60
7	32x6 20 DO	4 95	34 65
2	30x6 75 DO	5 70	11 40
			55 65
Less 5%			2 78
			52 87

Duplicate

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio
Los Angeles Branch

No. 67806

Approved by Gericke

Date 4/18/28

CREDIT TO

Gordon's, San Diego California

Folio 29018.

Salesman—Greenwood

Other reason for credit—To Liquidate Account

Terms—Gross

Quantity	Description	Price	Total
We credit your account with			
4	32x4½ Blue Tubes	3 45	13 80
2	35x5 Std Blue	4 60	9 20
6	30x5 DO S H S Tubes	4 95	29 70
6	34x7 DO	9 15	54 90
2	30x6 00 DO	3 65	7 30
2	31x6 00 DO	3 75	7 50
4	32x6 H S Tubes	6 65	26 60
			149 00

(Testimony of Carl O. Retsloff)

Less 10% 6-7" tubes	8 15	
Less 5% Blue	3 38	11 53
		<hr/>
		137.47

Duplicate

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio
Los Angeles Branch

No. 67806

Approved by Gericke

Date 4/18/28

CREDIT TO

Gordon's, San Diego California

Folio 29019

Salesman—Greenwood

Other reason for credit—To Liquidate Account

Terms—Gross

Quantity	Description	Price	Total
	We credit your account with		
2	30x5 Std H S Cord	29 85	59 70
2	30x5 Dos H S Cord	33 40	66 80
2	32x6 DO	48 45	96 90
3	34x7 DO	68 65	205 95
20	29x4 40 Std Baln Cord	9 65	193 00
7	29x4 75 DO	12 55	87 85
4	30x4 75 DO	13 05	52 20
6	31x5 00 DO	14 60	87 60
			<hr/>
			850 00
	Less 5% 5-6-7" Cords		21 47
			<hr/>
			828 53

Duplicate

(Testimony of Carl O. Retsloff)

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio

Los Angeles Branch

No. 67804

Approved by Gericke

Date 4/18/28

CREDIT TO

Gordon's, San Diego California

Folio 29015

Salesman—Greenwood

Other reason for credit—To Liquidate Account

Terms—Gross

Quantity	Description	Price	Total
3	28x5 25 reg Baln Cord	15 55	46 65
2	30x5 00 DO	14 10	28 20
3	32x5 00 SO	16 15	48 45
2	29x5 25 DO	15 95	31 90
1	31x6 00 DO		19 20
5	32x6 00 DO	19 70	98 50
5	33x6 00 DO	20 40	102 00
2	33x5 77 DO	21 85	43 70
			418 60

Duplicate

CREDIT MEMORANDUM

INDIA TIRE & RUBBER COMPANY

Factory Akron, Ohio

Los Angeles Branch

No. 67803

Approved by Gericke

Date 4/18/28

CREDIT TO

Gordon's Service, 18th & B Sts, San Diego California

Folio 29014

Salesman—Greenwood

(Testimony of Carl O. Retsloff)

Other reason for credit—To Liquidate Account

		Terms—Gross	
Quantity	Description	Price	Total
We Credit your account with			
20	30x3½ Std Cl Cord	8 75	175 00
8	30x3½ 6 S Pass Cord	10 95	87 60
2	31x4 DO	13 75	27 50
8	32x4 DO	15 00	120 00
4	33x4 DO	15 75	63 00
6	32x4½ DO	19 80	118 80
2	33x5 Std H S Cord	32 95	65 90
4	35x5 DO	36 25	145 00
			<hr/>
			802 80
Less 5% 5" Cords			10 55
			<hr/>
			792 25

Duplicate

I knew Mr. Schwan, the credit man for the India Tire & Rubber Company, during his lifetime. I first met him at the first meeting of the creditors in this matter on or about July 10th. Mr. Schwan is now deceased. On the 10th of July, at the time of the first meeting of the creditors, Mr. Blodgett, Mr. Schwan and I had a conversation and I inquired of Mr. Blodgett as to what disposition his company would make of the note which they had received from Gilbert Gordon, the bankrupt, and the moneys received upon it, and Mr. Blodgett told me that his company would return the note and all moneys received upon the account. Mr. Schwan was willing to turn over all the merchandise taken by them and apply upon Mr.

(Testimony of Carl O. Retsloff)

Gordon's account. It was a well known fact, and Mr. Blodgett stated that he knew that Mr. Gordon was in a failing condition. Mr. Schwan told him that he knew that Gordon was broke and that he took his tires out and applied it upon Mr. Gordon's account for the reason that he knew that Mr. Gordon probably would not get out of bed again, as he was a very sick man at that time and wanted to get his account in shape. Later, and at the time of the second meeting of the creditors I had another conversation with Mr. Schwan and asked him what disposition he was going to make of his tires that he took out of Gordon's place of business prior to the petition. He said he was willing to turn them back or turn over any moneys derived from them by the India Tire & Rubber Co. The tires have never been returned to me and I have received no money from *from* the India Tire & Rubber Company.

CROSS EXAMINATION

By Mr. Moore

The first conversation I mentioned was at the first meeting of the creditors on July 10th, 1928. I asked Mr. Blodgett if he would be willing to turn back the note and it was in that connection that Mr. Blodgett told me that he knew that Mr. Gordon was in a failing condition. That, in substance, is the language he used.

Mr. Moore—Q. You would not say that was the phrase he used, or whether he referred to his physical or financial condition?

A. I gathered from the conversation that he was speaking of his financial condition more than of his physical condition.

(Testimony of L. D. Blodgett)

Q. You have no recollection of the words used, only that he was in a failing condition?

A. Only as I have stated. (Transcript p. 8, Vol 1)

At that time I asked Mr. Schwan what his attitude was, or that of his company would be, with reference to returning the tires and he said at that time that his company's attitude was to return the tires. In a later conversation Mr. Schwan stated, in answer to a question that I asked, that he was willing to return the merchandise and would do so.

REDIRECT EXAMINATION

By Mr. Tompkins

I was present at your office at a time between the first and the second meetings of creditors. Mr. Schwan, yourself and myself were present. At that time Mr. Tompkins told Mr. Schwan that the Richfield Oil Company had agreed to return a note and the moneys received upon the note and turn it over to the trustee. Mr. Tompkins asked Mr. Schwan when he was going to return the tires that he had agreed to return and that were taken by the India Tire & Rubber Co. and Mr. Schwan made the statement at that time that he was attending to the matter and that there would be a return made of either the value of the tires or the tires themselves.

L. D. BLODGETT,

a witness for the Trustee, examined by Mr. Tompkins, testified as follows:

I am district manager of the Richfield Oil Company. In January, 1928 I first learned that Gilbert Gordan was in financial difficulty and substantiated it further in Feb-

(Testimony of L. D. Blodgett)

bruary, 1928. In the latter part of January Mr. Gordon voluntarily put himself on a cash basis with the Richfield Oil Co. and from that time on he was on a cash basis until the bankruptcy. During the months of January and February I was in frequent communication with Mr. Schwan. I do not know whether I wrote him until after the 8th of May but prior to that he came to San Diego at various times and endeavored to straighten out the affairs of the India Tire & Rubber Co. with Mr. Gordon and on every occasion he called upon me and I told him about our account being on a cash basis. On the 8th of May Mr. Greenwood, Mr. Schwan and myself had a conversation. They came to my office and we discussed the Gordon matter at some length. We then went to Mr. Gordon's home and had a conversation with Mr. Gordon relative to his financial condition in general and upon Mr. and Mrs. Gordon refusing to explain where their assets had dwindled to and a request from Mr. Swanholm that he would like to have a financial statement of that date, which resulted in a very upset condition on the part of Mrs. Gordon, finally they consented that we should go over to the service station and invoice the stock. After the stock had been invoiced and an appraisal made of the value of the building and equipment we then went down to my office again and there we discussed the thing pro and con, and in making this statement there was a note made that the Richfield Oil Co. had received from Mr. Gordon to apply upon account a note due him from W. H. Breon of Brawley. Mr. Schwan spoke for the India Tire & Rubber Co. and said if the Richfield Oil Co. would replace, in the event of bankruptcy, their note received on account from

(Testimony of L. D. Blodgett)

Mr. Gordon, that the India Tire & Rubber Co. would replace the \$2500.00, or some such sum, worth of tires that had been received from the Gordon station in April and it was definitely agreed on that date between the four of us.

I received a letter of April 4th from the India Tire & Rubber Co. which was in reply to a letter I had written to them. The letter was offered and received in evidence as Objector's Exhibit "B" and is as follows:

April 4th, 1928

Mr. L. D. Blodgett
District Manager, Richfield Oil Co.,
1302 Crosby St.,
San Diego, Calif.

Dear Mr. Blodgett:

Many thanks for your letter of April 2nd, regarding Gordon's Service Station.

I was in San Diego yesterday and had a long talk with Mrs. Gordon and Gilbert. I appreciate the motive that prompted you writing me and absolutely agree with you as far as the necessity of Mrs. Gordon having a good salesman to handle her business. The only unfortunate part as far as securing one lies in the fact that she is hardly able, under the present circumstances, to pay a man on a salary basis, and as you know, it is exceptionally hard to get any one worth while to do any sales work on a straight commission arrangement.

Nevertheless I am trying to secure someone for her that would be satisfactory. It is certainly regrettable that all this misfortune should be wished on one family, and we are all in hopes that Gilbert will soon be himself again.

Yours very truly,

India Tire & Rubber Co.

By W. R. Wheatley, Manager

(Testimony of L. D. Blodgett)

This letter was dated April 4th, 1928. At the time of the conversation of May 8th Mr. Gordon had said to us in his home that he would go voluntarily into bankruptcy. In that same conversation Mr. Schwan had discussed with us the return of the tires. After the conversation of May 8th I attempted to work out a scheme to relieve him in his financial condition and I took up that question with Mr. Schwan of the India Tire & Rubber Co. The conversations I had with Mr. Schwan from January up until the bankruptcy were mainly with reference to the financial standing of Mr. Gordon. After the conversation of May 8th I received a letter on Nelson & Price, Inc. stationery signed by Mr. Schwan. The letter, marked Exhibit "C", was offered and received in evidence and is as follows.

Los Angeles, Cal, May 17, 1928

Mr. L. J. Blodgett,
C/o Richfield Oil Co.,
San Diego, Calif.

Dear Mr. Blodgett:

As per conversation had with you the other day the following wire was sent to factory:

"Paul C. Searles: Blodgett of Richfield Oil Co. endeavoring to have Gordon prevail on Lessor of San Francisco to advance money or guarantee accounts of sufficient amount which would enable Gordon as he regains his health to resume business, Gordon to sign notes for full indebtedness Stop. Agreement to have proper safeguards limiting amount of personal withdrawals Stop If any profit made to prorate quarterly with creditors Stop

(Testimony of L. D. Blodgett)

Richfield and Bank will favor such an arrangement your opinion please immediately Wire

C. A. Schwan”

Answer received as follows:

“We approve Blodgett plans provided Lessor will guarantee Gordon’s business Stop Deem it advisable Mr & Mrs Gordon both sign notes Stop Evidently Gordon is improving in health, which if true, pleases us greatly. Stop. Keep us advised as to developments and Lessor’s final decision. P. C. Searles.”

From Mr. Searles reply it is very evident the India Tire Co. will do their part, but of course, they must be protected and any measures that are taken to assist Mr. Gordon must be in accord with the three principle creditors. I believe what ever arrangements are made should be made as speedily as possible so as to conserve the assets and save for the creditors all that can possibly be salvaged, otherwise the principles involved might just play along and dissipate all the assets and then just say “it can’t be done.”

Trusting to hear from you within a very short time. I am

Yours very truly,

India Tire & Rubber Co.

CAS/EO

C. A. Schwan

The exact amount of our claim against the bankrupt is \$3,996.40. We have returned all payments which were received to the trustee.

(Testimony of L. D. Blodgett)

CROSS EXAMINATION

By Mr. Moore

Mr. Gordon gave me a written financial statement in January, which has been lost, dated the 1st or 2nd of January, showing a net worth of \$17,000.00 or thereabouts. I remember he made a statement to our company in April. I think the copy you now show me is the statement which he made to us in April. It shows a net worth of \$4,748.88. I also saw a Dun's statement or report. Dun's report, as I recall it, gave him a net worth of \$25,000, but I do not know the date of that. I saw a copy of it at the First National Bank on the 8th of May. Your company had a copy of it, if I remember correctly. When I stated that I learned in January that Gordon was in a bad way financially that statement was based on the fact that Gordon had requested that we put him on a cash basis and upon a statement made by Gordon to me that his accounts receivable were uncollectable to a very large degree.

I first met Mr. Schwan with Mr. Schiller in 1927. He talked to me every time he came down and I am pretty sure that we discussed the Gordon matter in January. It was on the 24th day of March that we received the note from Breeon on account. Sometime in the month of March Mr. Schwan called upon me and I told him that we were anticipating this Breeon note on the account. He knew that from the time we took it over. He knew that we had the note as Mr. Gordon was setting it up as one of his assets in his statement. I remember distinctly discussing the matter with Mr. Schwan, the exact date I cannot state. I remember I talked with Mr. Schwan

(Testimony of L. D. Blodgett)

about getting a salesman for the Gordon place. We discussed it at quite some length over the telephone in April some time. He wired me from Seattle about financing this case so we would not take a loss. My remembrance is that the first time we discussed returning the assets was when we became aware of the fact that Gordon might take bankruptcy proceedings in order to avoid paying his creditors. That was the day we went out to their home that we agreed that if we put our stuff back they would put their stuff back. Prior to that time every effort had been made on the part of Mr. Schwan and myself to get Mr. Atherton, his attorney, to get some one to re-finance Mr. Gordon so that we could get ahead out of this period of depression and bring ourselves out of the woods.

REDIRECT EXAMINATION

By Mr. Tompkins.

Q. By the court: Was anything said between you and Mr. Schwan prior to the 18th of April concerning the solvency or insolvency of Mr. Gordon?

A. Yes, that is just what I tried to show, that at that time and two or three times, Mr. Schwan and I discussed Mr. Gordon's financial worth.

THE COURT: Was that prior to the 18th of April, 1928.

A. Yes.

THE COURT: When was that?

A. That I cannot tell, but it was at one of his periodical visits.

THE COURT: Prior to that time? A. Yes, sir.

THE COURT: What conversation did you have with Mr. Schwan relative to the solvency or insolvency of Mr. Gordon prior to April 28th?

(Testimony of L. D. Blodgett)

A. That would be difficult to answer as to exactly when.

THE COURT: Was it ever mentioned? A. Yes, sir.

THE COURT: In what way? How was it mentioned?

A. In an effort to work out plans to safeguard ourselves from loss. (Transcript p. 29, Vol. 1)

Mr. Gordon had a brother-in-law in San Francisco, a Mr. Lessar, and at one time Mr. Lessar had given the India Tire & Rubber Co. a guarantee for a certain bill of goods. After Mr. Gordon had been taken sick Mr. Schwan told me that he had endeavored to get Mr. Lessar to again endorse or guarantee Mr. Gordon's account. If my memory serves me right, he made a trip to San Francisco for that purpose. The reason why we did not extend Mr. Gordon further credit after January was because he had a large amount of accounts receivable which he could not collect.

The Court: Did you know he was solvent or insolvent after April 8th?

Mr. Moore: We object to that as immaterial.

The Court: It is, but there is an angle where I want to get.

A. We had that in mind when we endeavored to work out a plan. I believed in January, and at a later date, that if Mr. Gordon could get the backing that Mr. Schwan thought he could get from Mr. Lessar he would be able to work out and put himself on easy street again.

It is stipulated between counsel that the Mr. Schwan referred to in the testimony was the Credit Manager of the India Tire & Rubber Co. in this district between the

(Testimony of Frank E. Kelly)

first of January up until the date of the adjudication of the bankrupt in 1928.

FRANK E. KELLY,

witness for the claimant, India Tire & Rubber Company, examined by Mr. Moore testified as follows:

I am chief clerk of the Bradstreet Company, Los Angeles branch, and have held that position since 1921. The little orange slip shown me is an inquiry ticket written by me at the office of Bradstreet Company in the presence of Mr. Schwan. After that I put in a search for Mr. Schwan and secured a report on Gilbert Gordon. The ticket is dated March 15th. The business of the Bradstreet Company is gathering, formulating and furnishing information for subscribers and the request made by Mr. Schwan was in the regular course of business. After receiving the request I gave directions to some one in the office of the Bradstreet Company to endeavor to obtain information concerning Gordon. The ticket was sent out to the reporting window and when the information was gathered the report was formulated in the office. After the report was completed it was handled by the Mail Clerk. In gathering information for this report we made a personal call for information, solicitation and communicated with San Diego with our reporter, Fred J. Lovejoy. Aside from this we had trade information, experience of the trade, creditors and information from people who had done business with Mr. Gordon. I forwarded the report, after it was formulated, to Mr. Schwan on the 21st day of March, 1928. The letters T. D. on the bottom of the report mean in our code ten to twenty thousand dollars.

(Testimony of Frank E. Kelly)

We have four grades of credit. "D" is our second grade of credit, that is, ten to twenty thousand second grade credit. The report marked Exhibit 1 was received in evidence and is as follows, and includes the orange slip referred to by the witness:

FINANCIAL CONDITION: A financial statement of his affairs is not available at this time, as he is reported to be ill, and those in charge claimed inability to submit late figures.

The last statement we have is under date of November 5, 1926, at which time claimed the following:

Assets:

Merchandise	\$11,161.50
Accounts receivable	12,366.72
Cash in bank	3,761.50
Cash in hand	376.50
Machinery and fixtures	1,450 00
Option on business property	7,000 00
Buildings, etc	6,000 00
Studebaker car	1,600 00
Chevrolet car	650 00
	<hr/>
	44,366.55

Liabilities:

Open accounts for merchandise (not due this month	2,413.83
Accts payable for merchandise (Due in Dec & Jan)	15,528 48
Owing on cars	426 80
	<hr/>
	18,369.11
Net worth	25,997.44

(Testimony of Frank E. Kelly)

Insurance on merchandise	\$15,000
Insurance on buildings & equipment	7,500
Signed Gordon's Service	

By Gilbert Gordon"

Authorities consulted state that there has been practically no changes in the business during the past year. It is stated that Gordon has been ill for the past several months, and the business has been at somewhat of a standstill. At the present time has only one salesman on the outside. Still has the India Tire Agency and has a substantial stock of tires on hand, and at the bank it is found that he has reduced his account to about \$1000. The major portion of his cash being used for personal needs. Still has his option to purchase the business property, tho has not *purchase* same at this time. Has not increased his equipment investment any during the past year, and same would be subject to depreciation from credit standpoint.

Reported to be owing considerably for merchandise bills, tho the major portion of same understood to be on dating basis. After making necessary allowances, those consulted estimate worth around \$10,000 to \$15,000 net."

(Orange Slip)

1928 Report Only

BRADSTREETS

McComas Building—120 E 8th St

Los Angeles 2-25-28

The Bradstreet Co. gives in confidence and under the terms of our agreement with you, for our exclusive use, information concerning the responsibility, character, reputation, credit, etc. of

(Testimony of W. S. Storms)

Name Gordon Service

Business

Street & No.

City (or P. O.) San Diego, Calif.

County State

Signature of India Tire & Rubber Co, Subscriber

P. O. Address

(March 21, 1928—(in pencil)

CROSS EXAMINATION

By Mr. Tompkins

I do not know whether the statement procured was true as to Mr. Gordon's financial condition.

W. S. STORMS,

called as a witness for the claimant, examined by Mr. Moore, testified as follows:

I was a salesman for the India Tire & Rubber Co. in the years 1927 and 1928. During December 1927 I sold Mr. Gordon certain merchandise to be delivered in January 1928. In November 1927 I sold Mr. Gordon some merchandise and took back certain merchandise from him. The value of the merchandise taken back was \$4500.00 and it was taken back in October, 1927. In April, 1928 I saw Mr. and Mrs. Gordon at San Diego. Mr. Gordon was quite ill and I did not discuss business with him except superficially. He was pretty sick. I did discuss business quite thoroughly with Mrs. Gordon. Ever since we did business with the Gordons it was Gordon and his wife, and all leases were signed by Mr. Gordon and Mrs. Gordon. We recognized them as partners and I saw Mrs. Gordon at the place of business many times helping him

(Testimony of W. S. Storms)

about the business. When I went there on April 4th, 1928 I told Mrs. Gordon I believed she had too much merchandise. She agreed that they had and that business had been quiet, that Mr. Gordon was sick and of course this was new merchandise, a comparatively new product upon which there was quite a substantial demand by all of our dealers in Southern California. I told Mrs. Gordon this: That inasmuch as they had approximately \$5,000 or \$6,000 worth of merchandise on hand I suggested that we get this stock out and return this merchandise for credit, as we had done many times before and still it would reduce their stock and it would help us out in giving us merchandise that we could give our dealers who needed it badly. Mrs. Gordon agreed that this was the proper thing to do and that is what I did. I went in and took out sizes on which they had a surplus and shipped them back to Los Angeles. At that time I had no financial statement from Mr. or Mrs. Gordon that indicated to me that they were not solvent. Mrs. Gordon stated that things had been particularly quiet, collections were slow and owing to the fact that Gilbert, her husband, was confined to his bed he was unable to get out and solicit business; that things were particularly quiet, and that she still hoped, was very hopeful, that he would be on his feet in a short time and would be able to resume his activities as he had in the past. She was very optimistic, as Mrs. Gordon has always been, and said nothing to me of any nature whatsoever regarding being unable to pay. In fact, she said that as far as a few bills they owed, they would be able to carry on the business and straighten those out in a short time.

(Testimony of W. S. Storms)

Before I came down to San Diego on the occasion that I took the tires back from Mr. Gordon I had a conversation with Mr. Schwan about the matter. I told Mr. Schwan that Mr. Gordon had a big stock of tires there and that he was sick and that we needed the merchandise and Mr. Schwan said he thought it was a good idea to take the merchandise we needed. We had quite a demand for it. We shipped the merchandise back to Los Angeles and put it back in stock. I had no talk with Mr. Gordon about being solvent or insolvent; the only question was the matter of his health. I had no reason to believe he was financially embarrassed at that time. I first learned that he was insolvent about the first of June. I did not examine his books nor ask about his bills receivable. If there was any suspicion on my part as to their financial standing I would not ship them goods subsequent to the time we took this merchandise back. We took back the merchandise in October and sold them another bunch in January. There was no suspicion on my part that they were financially embarrassed at the time I shipped these goods back from their stock. After I took the merchandise from their place of business I would say they had approximately \$2,000 to \$3,000 worth of stock still on hand. I did not take enough merchandise to cripple them. From the first of January, 1928 to the 14th of April, 1928, when I took the merchandise back we sold Gordon about \$6500. worth of merchandise on credit in January, about \$775.00 worth in February and March and about \$115.00 in April, prior to the 14th of that month. The merchandise I refer to as having been sold to Mr. Gordon in January 1928 was actually sold in November, 1927 but was delivered in

(Testimony of Mr. Blodgett)

January, 1928. When we learned in February that Gordon's business was dormant we naturally paid particular attention to his business as we were short on merchandise. We took tires from other dealers. It is not an uncommon practice. My only thought about Gilbert Gordon was that he was quick sick. It never occurred to me that he would not be able to pay for these goods; on the contrary Mrs. Gordon was very optimistic about things and thought Mr. Gordon would get on his feet. I cannot say how much the merchandise which we took from Mrs. Gordon depreciated from January to the day we took it back. The tire market fluctuated. It was new merchandise and whether it would depreciate would depend upon the tire market.

MR. BLODGETT

recalled for further cross-examination by Mr. Moore testified as follows:

I prepared the statement now shown me with Mr. Schwan as a witness, some of the figures are mine and some are Mr. Schwan's. Mrs. Gordon gave me the figures, taking them from their books. Any information she gave me was supported by their books. The statement referred to, marked Exhibit III, was received in evidence and is as follows:

FINANCIAL STATEMENT

Name Gilbert S. Gordon

Mail Address 1170 18th St, San Diego

to

Richfield Oil Co. of California

The following statement showing my or our financial condition as of 4/26/28 is furnished for the purpose of obtaining credit for goods sold to me or us, and I or we hereby guarantee that the statements made herein are true and correct; and I or we agree to, and will, notify you immediately in writing of any unfavorable change; otherwise this is a continuing statement.

ASSETS		LIABILITIES	
Cash on hand (107.50) and in bank (200)	\$307.50	Owe for borrowed money:	\$4500.00
Accounts receivable (good, not pledged or sold)	2,670.55	To Banks unsecured	
Accounts slow (atty)	2,543.48	Owe for merchandise:	
Merchandise (at cost) Gas, lubricating oils (115.60) (187.50) grease, etc. (25.00)		Open acct, not due (India)	2467.01
Tires, Access. (2805.10) (100.00) repair parts, tubes (1048.65) (do not include consigned goods)		Open acct, past due R. O. Co.	3996.49
Automobiles (at cost)		Others—all small and current	80.00
New Buick	1200	Owe for automobiles	
Used Olds	100	Used—Buick	450.00
		Current liabilities	\$11,493.50
		Total liabilities	4,748.88
		TOTAL	\$16,242.38

Chevy.	450	1,750.00
Current assets		
Machinery, fixtures, & equipment—		11,553.38
present value (see Schedule B)		4,000.00
Other assets (Itemize) W. H.		689.00
Breon note		
Total		<u>\$16,242.38</u>

MISCELLANEOUS INFORMATION

(Omitted questions to which no answer given)

Bank with (1) First National Address 5th Ave & Broadway
 Do you pledge or sell your account or notes to banks, finance companies, or others? No.
 Are any claims in attorney's hands, or any suits or judgments outstanding against you? No.
 Previous business experience. Manufacture.
 Where? San Francisco.

If leasing or renting garage property, fill in detail:

Owned by: Harry Lesser & C. Blanchard

Address: San Francisco

Lease expires: Indefinite

INSURANCE

Fire: Building \$2500.00 Stock \$10,000.00 Equipment \$2500.00
 Life: \$10,000 Carried by Penn Mutual, payable to wife
 " 20,000 " Northwestern Life, payable to wife
 " 5,000 " Equitable, payable to wife.

Buy merchandise principally from

Name

Richfield Oil Company
 India Tire & Rubber Company
 Motor Hardware
 Reuther Auto

Address

San Diego
 Akron, Ohio
 San Diego
 San Diego

Name of individual, firm or corporation: Gordon's Service

(Signed by) Sadie Gordon

4-26-28

(Testimony of Mr. Blodgett)

REDIRECT EXAMINATION

By Mr Tompkins

The nature of the conversation had by me and Mr. Schwan on May 1st at the La Jolla Club House was that we were discussing two or three plans whereby Mr. Gordon could be refinanced to the end that all of us would receive what was coming to us. Prior to that, and on April 28th, we had discussed Mr. Gordon's financial statement. (Pages 31 and 32 of transcript, Vol 2)

Q. I will show you a letter written by your company March 12th, 1928 to you and I ask you who wrote that letter?

Mr. Moore: I object to any letter written by his company to him as being self serving.

The Court: The objection is overruled and the letter will be admitted.

Mr. Moore: We object as being irrelevant and immaterial.

The Court: Objection overruled.

The letter, marked Exhibit "D", was received in evidence and is as follows:

Richfield Oil Co. of California

Los Angeles, California, March 12, 1928

Mr. L. D. Blodgett

District Manager
San Diego, Calif.

Mr. Gilbert Gordon
San Diego, Calif.

In the absence of Mr. Finlayson the writer is asking you to please accept this letter as your authority to secure an assignment from subject debtor of his interest in the Breon Service Station at Brawley, proceeds of same to be

(Testimony of Mr. Blodgett)

applied against his indebtedness on the San Diego account. Will you kindly have this assignment drawn, if possible, in such manner that it is for collection only, and will enable us to go back at Gordon for the amount of same in the event that we are unable to realize on his contract with Breon for any reason.

We note with interest your statements as to Mr. Lesser's purchase of the lot on which Gordon's station is located, and further your intention of consulting with this man shortly with the idea of further liquidating Gordon's indebtedness to us *throu* his assistance.

Your assurance of the ultimate collection in this instance has made us feel easier about the situation, and we certainly appreciate the efforts you are making to protect us on the balance outstanding.

May we ask that you also endeavor to obtain a schedule of liabilities in this case in order that we may know to whom this man is owing, and to what amounts. This will put us in position to consult with other large creditors with a view to coming to some mutual understanding to preclude possibility of others attaching the business. We have already consulted with Mr. Wheatley, India Rubber Mgr. for Southern California to this end. They will not press him.

J. A. Finlayson

Gen. Credit Manager (J. A. F.)

ALS.DC

CC El Centro

CC (Breon File)"

At the time this letter was written I had told Mr. Schwan about the conditions out there at Gordons. We

(Testimony of Mr. Blodgett)

had a verbal discussion about his assets having been reduced \$17,000 from January 1st to April.

That on or about the 30th day of April, I received a letter from the India Tire & Rubber Company, enclosing a statement (original statement referred to, in evidence). This statement bore the endorsement: "This statement is sent you by request of C. A. Schwan. Signed The Office Manager." The statement is dated 4/30/28, and goes back to November 30, 1927, and on January 27th as an unpaid trade acceptance of \$1464.00. An unpaid trade acceptance of March 13th of \$317.05. An unpaid trade acceptance of March 27th of \$2541.95, all of which was unpaid at the time the statement was made in April.

RE-CROSS EXAMINATION

By Mr. Moore.

At the time I received this letter I did not believe that Mr. Gordon was solvent because we knew that his trade acceptances had not been taken up at the bank. I told Mr. Schwan in March that we had some trade acceptances turned back.

EXAMINATION BY THE COURT

The reason why I say that Mr. Schwan knew the financial condition of Mr. Gordon is that he knew both from Gordon and from our credit department that Gordon's trade acceptances to us had been repudiated, one in January and one in February. It was a thing of some concern and we discussed it at some length at one time. Mr. Schwan was of the opinion that he and I, working together, would avoid a calamity in this matter. That was prior to April, and then we discussed it in La Jolla that time and some time in the early part of March, how it

(Testimony of Mr. Blodgett)

could be settled. Mr. Schwan and Mr. Swanholm of our company came to San Diego and together we discussed the situation pretty thoroughly because we were even trying to work out a plan whereby Mr. Lesser could be brought into breach with their guaranty, or with money, or with a lease on the property that would allow them to sell their equipment and stock, together with the lease, for a sufficient amount to take them out of the hole. We even went so far as to have Mr. Gordon talk to his brother-in-law in San Francisco for the purpose of enlisting his help. That was in the early part of March. We discussed it at some length to interest Mr. Lessar, even as late as the first of May, to put money into it to back Mr. Gordon up. In this letter I submitted three plans with the idea of financing things. That was prior to the meeting at La Jolla.

By the Court: As a matter of fact, did you hear or know that Mr. Gordon was insolvent on the 18th of April, 1928?

A. If he was insolvent on the day he into bankruptcy he was insolvent on the 18th of April.

Mr. Moore: I object on the ground that it is argumentative. I object to the question as it calls for a conclusion of the witness.

A. I would say that he was insolvent on the 18th of April, even if he made a statement that he had a net worth.

By the Court: Did you know from facts obtained that Mr. Gordon, prior to April, 1928, that he was insolvent, of your own knowledge?

(Testimony of Mr. Blodgett)

A. My opinion naturally would be that Mr. Gordon was insolvent.

The Court: I would ask you the reason why you arrive at that conclusion or idea?

A. Because he had a terrific amount of stock unpaid for; because he had an unreasonable amount of credit upon his books that in my judgment was not collectible; because in his statement he set up his lease as being worth some \$6,000 or \$7,000, when he did not have a lease; that the amount he stated his building was worth was far in excess of its worth. The only figures I entered into that statement in January were made in regard to his building, which he stated I had made too low. I would say that any statement he made was bad from that time to the time he went into bankruptcy. (P. 38-39 of Transcript Vol 2)

By the Court: Mr. Blodgett, can you state whether or not Mr. Gordon was able or not able to pay his obligations as they came due prior to March, 1928. A. He was not.

The Court: Do you know whether or not Mr. Schwan knew of that situation?

A. If I can refer to this statement, I would say that he knew.

The Court: Why do you bring that home to Mr. Schwan?

A. Mr. Schwan is the credit manager (Tran. p. 40)

From November 30th to the date the merchandise was taken it appears that the bankrupt paid the India Tire & Rubber Co. the following amounts: Dec. 8th—\$15.20; Dec. 12th, cash \$20.46; Dec. 19th, credit memorandum

(Testimony of R. W. Rawley)

\$57.47; Jan. 4th, credit memo, \$2.70; Jan. 16th, credit memo. \$67.88; Feb. 14th, credit memo. \$14.75; March 4th, credit memo. \$7.20. The amount of the trade acceptances to the India Tire & Rubber Co. which was refused was \$2,149.95. This was on March 27th.

That the time elapsing between the refusal of the payment of last trade acceptance and the removal of the tires by the India Tire and Rubber Company was from March 27th to April 18th. That the bankrupt, Mr. Gordon, was unable to pay his obligations as they came due prior to March, 1928. That from January until the filing of the petition, on various occasions I discussed with Mr. Schwan fully the financial condition of Gilbert Gordon.

R. W. RAWLEY,

witness for Claimant, examined by Mr. Moore, testified as follows:

I was formerly traveling auditor for the India Tire and Rubber Company and am now employed by Nelson Price Company who are exclusive distributors of the India Tires in Los Angeles. That the market value of the tires taken back from Mr. *Godon* at the time they were taken back would be from 25 to 40 per cent less than the prices on the credit memorandum. (Tr. vol. 2, p. 44). We gave him full credit. (Tr. vol. 2, p. 43)

Q. About this credit memorandum for merchandise taken back from Mr. Gordon there is a statement, "Taken to liquidate account"; can you explain what that means?

A. To liquidate account is a reason used by the India Tire and Rubber Company, to my knowledge, to balance an account. Just a requirement of the tire business.

(Testimony of H. B. Girard)

H. B. GIRARD,

a witness for claimant, examined by Mr. Moore testified as follows:

I am office manager of the India Tire and Rubber Company at Los Angeles. The paper I have is a ledger sheet covering the period from August 24th, 1927 to the present time. It shows the taking back of merchandise in the fall of 1927. The value of the merchandise taken back in the fall of 1927 I would estimate at about \$3500 to \$4000. That was old style stock.

[Endorsed]: No. 11544-M. In the District Court of the United States, for the Southern District of California, Southern Division. In the matter of Gilbert Gordon, Bankrupt. Stipulation and evidence received upon the trial. Filed Oct 29, 1929 at 35 min past 4 o'clock P. M. R. S. Zimmerman, Clerk, by F. W. Jones, Deputy. Minor Moore, C. V. Caldwell, 911 Stock Exchange Bldg., Attorneys for Appellant.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In the Matter of)
(In Bankruptcy
GILBERT GORDON,) No. 11544-M
(PETITION FOR
Bankrupt.) APPEAL

To the Honorable Paul J. McCormack, Judge of the United States District Court for the Southern District of California, Southern Division:

The India Tire and Rubber Company, your petitioner, conceiving itself aggrieved by the final order of this court entered on the 26th day of June, 1929, in the above entitled proceeding affirming the order of the referee in bankruptcy, by which order your petitioner's claim in the sum of \$8539.71 against the estate of said bankrupt, was wholly disallowed, does hereby petition for an appeal from the said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and a citation granted directed to Carl O. Retsloff, trustee in bankruptcy, and commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in such proceeding duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

INDIA TIRE AND RUBBER COMPANY

By Minor Moore

Petitioner

Minor Moore
C. V. Caldwell,

Solicitors for Petitioner.

The foregoing appeal is hereby allowed.

Dated this 8th day of July, 1929

Paul J. McCormick

District Judge.

[Endorsed]: No. 11544-M. In the United States District Court, Southern District of California, Central Division. In the Matter of Gilbert Gordon, Bankrupt. Petition for Appeal. Filed Jul. 8, 1929 at 5 o'clock P. M. R. S. Zimmerman, Clerk, by B. B. Hansen, Deputy. Minor Moore, C. V. Caldwell, Stock Exchange Building, Los Angeles Calif., Trinity 4097, Solicitors for Petitioner.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In the Matter of)	
	(	In Bankruptcy No. 11544-M
GILBERT GORDON,	)	ASSIGNMENT OF
	(	ERRORS
Bankrupt.)	

Now comes India Tire and Rubber Company, a corporation, appellant herein, and files the following assignment of errors on appeal from the order of this court dated June 26th, 1929.

—I—

The United States District Court for the Southern District of California, Southern Division, erred in affirming the finding of the referee in bankruptcy wherein said referee found and determined that the bankrupt, Gilbert Gordon, was insolvent at the time of the transfer and delivery of the merchandise in question to appellant.

—II—

That the said District Court erred in affirming the finding of the referee in bankruptcy wherein said referee found and determined that the said India Tire and Rubber Company had reasonable cause to believe at the time of said transfer of merchandise, that a preference would be effected by reason of said transfer.

—III—

That the said District Court erred in affirming the finding of the referee in bankruptcy wherein said referee found and determined that at the time of said transfer of property to appellant, said appellant had reasonable cause to believe that the debtor was insolvent.

—IV—

The said District Court erred in failing to find and determine that there was not sufficient evidence to sustain the finding and decision of the referee wherein the said referee found and determined that the debtor, Gilbert Gordon, was insolvent at the time of the transfer of the property in question to the appellant, India Tire and Rubber Company, and that said India Tire and Rubber Company had reasonable cause to believe at the time of said transfer that a preference would be effected by reason thereof, and that said India Tire and Rubber Company had reasonable cause to believe at the time of said transfer that the said Gilbert Gordon was insolvent, there being no sufficient evidence to sustain said finding and decision.

—V—

The said District Court erred in failing to reverse the said decision of the referee on account of errors of the said referee, appearing in the record, in improperly receiving evidence which was duly objected to by appellant.

WHEREFORE, appellant prays that said order may be reversed.

INDIA TIRE AND RUBBER COMPANY,

a corporation,

Appellant.

By Minor Moore

By C. V. Caldwell

Solicitors for Appellant.

[Endorsed]: No. 11544-M. In the United States District Court, Southern District of California, Southern Division. In the Matter of Gilbert Gordon Bankrupt. Assignment of Errors Filed Jul 9, 1929 at 3 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy. Minor Moore, C. V. Caldwell 911 Stock Exchange Bldg. Tr. 4097. Attorneys for India Tire & Rubber Company.

IN THE DISTRICT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In the Matter of)	
	(	No. 11544-M.
GILBERT GORDON,	)	ORDER FIXING BOND
	(	FOR APPEAL.
Bankrupt.)	

An order having been heretofore made allowing the India Tire & Rubber Company to appeal from the order of this court rejecting the claim of said Company, to the United States Circuit Court of Appeals, Ninth Circuit,

NOW, THEREFORE, upon the application of the said India Tire & Rubber Company, IT IS ORDERED that the bond on said appeal is hereby fixed in the sum of \$500.00

DONE AND SIGNED on this the 10th day of July, A. D. 1929.

Paul J. McCormick

District Judge.

[Endorsed]: No. 11544-M In the District Court of the United States for the Southern District of California, Southern Division. In the Matter of Gilbert Gordon, Bankrupt. Order Fixing Bond for Appeal. Filed Jul 12 1929 at 45 min. past 9 o'clock A m R. S. Zimmerman, Clerk B. B. Hansen Deputy Minor Moore C. V. Caldwell 911 Stock Exchange Building, TR 4097 Attorneys for India Tire & Rubber Company.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In the Matter of)	
	(
GILBERT GORDON,	)	In Bankruptcy No. 11544-M
	(	BOND ON APPEAL
Bankrupt,)	

KNOW ALL MEN BY THESE PRESENTS:

That we, India Tire and Rubber Company, a corporation, as principal, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, as surety, are held and firmly bound unto Carl O. Retsloff, Trustee in Bankruptcy of the estate of Gilbert Gordon, bankrupt, in the sum of \$500.00, for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of July, 1929.

Whereas, the above named India Tire and Rubber Company has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the final order in the above entitled proceeding entered in the office of the Clerk of the United States District Court of the Southern District of California, Southern Division, on the 26th day of June, 1929.

Now, therefore, the condition of this obligation is such that if the above named India Tire and Rubber Company, a corporation, shall prosecute its appeal to effect, and answer all damages and costs if it fails to make said ap-

peal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

INDIA TIRE AND RUBBER COMPANY

By Minor Moore, attorney

Principal

INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA (SEAL)

By C. F. Batchelder

Attorney-in-fact Surety.

The foregoing bond approved

Wm. P. James

United States District Judge.

STATE OF CALIFORNIA,)
County of Los Angeles) ss.

On this 12 day of July in the year one thousand nine hundred and Twenty-Nine, before me F. D. Lanctot, a Notary Public in and for the County of Los Angeles personally appeared C. F. Batchelder known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the INDEMNITY INSURANCE CO. OF NORTH AMERICA, and acknowledged to me that he subscribed the name of the Indemnity Insurance Co. of North America thereto as principal, and his own name, as Attorney-in-fact.

[Seal]

F. D. Lanctot

Notary public in and for the county of Los Angeles
State of California

[Endorsed]: 11544-M Mines & MacKeigan & Anderson, Inc. 639 South Spring Street Los Angeles, California VAndike 2890 Bond Filed Jul 13 1929 at 50 min. past 9 o'clock A m R. S. Zimmerman, Clerk B. B. Hansen Deputy Indemnity Insurance Company of North America Philadelphia

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS NINTH CIRCUIT

In the Matter of)
)
GILBERT GORDON,) STIPULATION AS TO
) RECORD ON APPEAL
)
Bankrupt.)

WHEREAS, in the above entitled proceeding the India Tire and Rubber Company, a corporation, did on the 9th day of July, 1929, duly file in the District Court of the United States for the Southern District of California, Southern Division, a petition for appeal, a citation and assignment of errors, which said appeal was allowed by order of the District Court upon said day, and the time to certify the record herein having been duly extended to the 15 day of September, 1929,

NOW, THEREFORE, it is hereby stipulated that the record to be certified to this court by the Clerk of the United States District Court for the Southern District of California, Southern Division, on said appeal shall consist of the following:

1. Claim of India Tire and Rubber Company against the estate of the bankrupt;
2. Objections to said claim by the trustee;
3. Order of referee disallowing claim;
4. Exceptions to decision of the referee;
5. Petition for revision of referee's decision;
6. Order of District Court affirming referee's decision;
7. Petition for appeal;
8. Citation;
9. Assignment of errors;
10. Statement of testimony

11. All documents offered in evidence, together with the original petition in bankruptcy and schedules thereof, or such part as may be necessary.

Dated this 9th day of July, 1929.

Minor Moore
C. V. Caldwell
Attorneys for Appellant.
Tompkins and Clark
Will M. Tompkins
Attorney for Respondent

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Gilbert Gordon, Bankrupt. Stipulation as to Record on Appeal, and Stipulation Extending Time to Certify Record on Appeal. Filed July 19 1929 3 P. M. R. S. Zimmerman, Clerk By B. B. Hansen Deputy Clerk Minor Moore C. V. Caldwell 911 Stock Exchange Building. Attorneys for India Tire & R. Co.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

In the Matter of)
(Bankruptcy No. 11544 M
GILBERT GORDON,) PRAECIPE
(
Bankrupt)

To the Clerk of the United States District Court:

You are hereby requested to make a transcript of record to be filed in the United States Court of Appeals for the

Ninth Circuit pursuant to an appeal allowed in the above entitled proceeding, and to include in such transcript the following:

1. Claim of India Tire & Rubber Company against the estate of the bankrupt.
2. Objections to said claim by the trustee.
3. Order of Referee disallowing claim.
4. Exception to decision of the Referee.
5. Petition for revision of Referee's decision.
6. Order of the District Court affirming Referee's decision.
7. Petition for Appeal.
8. Citation.
9. Assignment of errors.
10. Statement of testimony, in narrative form, including exhibits set out in said statement.
11. Stipulation as to record on appeal.
12. Praecipe.

Dated October 29, 1929.

Minor Moore

C. V. Caldwell

Attorneys for Appellant.

STATE OF CALIFORNIA }
 COUNTY OF LOS ANGELES } SS.

Gladys A. Elliott, being first duly sworn, deposes and says: That she is a citizen of the United States and above the age of eighteen years; that heretofore, on the 29th day of October, 1929 she served the within Praecipe by enclosing a copy of the same in a sealed wrapper and addressed the same to Tompkins & Clark, Spreckels Theater Building, San Diego, and after having prepaid the

postage on same, deposited same in the postoffice at Los Angeles, California.

That there is a daily exchange of mail by the United States Postal Department between the City of San Diego and the City of Los Angeles.

Gladys A. Elliott.

Subscribed and sworn to before me this 29 day of October, 1929.

[Seal]

C. V. Caldwell

Notary Public in and for Los Angeles County, California.

[Endorsed]: No. 11544-M. In the District Court of the United States, for the Southern District of California, Southern Division. In the Matter of Gilbert Gordan Bankrupt. Praeceptum Filed Oct 29, 1929 at 10 min past 4 o'clock P. M. R. S. Zimmerman, Clerk, F. W. Jones, Deputy. Minor Moore. C. V. Caldwell 911 Stock Exchange Building Los Angeles California Attorneys for Appellant.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In the Matter of)
(In Bankruptcy No. 11544-M
GILBERT GORDON,) CLERK'S
(CERTIFICATE.
Bankrupt.)

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 53 pages, numbered from 1 to 53 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; claim of India Tire & Rubber Company against estate of the bankrupt; objections to proof of debt; order sustaining objections of trustee; exception to decision of the referee; petition for revision; order affirming decision; statement of testimony; petition for appeal; assignment of errors; order fixing bond on appeal; bond on appeal; stipulation as to record on appeal and praecipe.

I DO FURTHER CERTIFY the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this..... day of November, in the year of Our Lord One Thousand Nine Hundred and Twenty-nine, and of our Independence the One Hundred and Fifty-fifth.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

